

LAW OFFICES
LEVENTHAL, SENTER & LERMAN P.L.L.C.SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809TELEPHONE
(202) 429-8970TELECOPIER
(202) 293-7783

October 23, 2000

WWW.LSL-LAW.COM

RECEIVED

OCT 23 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYWRITER'S DIRECT DIAL
202-416-6748WRITER'S E-MAIL
JSHIH@LSL-LAW.COMNORMAN P. LEVENTHAL
MEREDITH S. SENTER, JR.
STEVEN ALMAN LERMAN
RAUL R. RODRIGUEZ
DENNIS P. CORBETT
BRIAN M. MADDEN
BARBARA K. GARDNER
STEPHEN D. BARUCH
SALLY A. BUCKMAN
NANCY L. WOLF
DAVID S. KEIR
DEBORAH R. COLEMAN
NANCY A. ORY
ROSS G. GREENBERG
H. ANTHONY LEHV
JOHN D. POUTASSE
CHRISTOPHER J. SOVA
PHILIP A. BONOMO
JUAN F. MADRID
SARAH R. ILES
JANET Y. SHIHVIA COURIERMs. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals Complex
445 12th Street, S.W.
Washington, D.C. 20554Stop Code 1800D5
Attn: Allocations BranchRe: In the Matter of Amendment of Section 73.202(b), Table of
Allotments (Thermopolis and Story, Wyoming)
MM Docket No. 00-159, RM-9889

Dear Ms. Salas:

On behalf of Legend Communications of Wyoming, L.L.C. ("*Legend*"), there are transmitted herewith an original and four copies of its Comments in the above-referenced matter in response to the Commission's Notice of Proposed Rule Making ("*NPRM*") released on September 1, 2000. Since the NPRM specified a deadline date of October 23, 2000 for the filing of comments, these comments are timely filed.

Please note that Legend purchased the construction permit, which is the subject of this NPRM, from Idaho Broadcasting Consortium, Inc., the original petitioner, on August 1, 2000, pursuant to authority granted in FCC File No. BAPH-20000321ABG. Legend adopts the rule making request and is committed to the implementation of the improvements requested in the original Petition for Rule Making. Please also note this matter in the Commission's records,

LEVENTHAL, SENTER & LERMAN P.L.L.C.

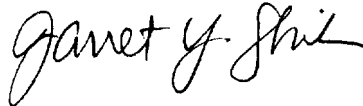
Ms. Magalie R. Salas

October 23, 2000

Page -2 -

and indicate that service copies of all material subsequently filed in this proceeding should be provided to this office.

Respectfully submitted,

A handwritten signature in cursive script, reading "Janet Y. Shih".

Janet Y. Shih

Enclosures

RECEIVED

OCT 23 2000

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 00-159
Table of Allotments,) RM-9889
FM Broadcast Stations.)
(Thermopolis and Story, Wyoming))

To: Chief, Allocations Branch

COMMENTS OF LEGEND COMMUNICATIONS OF WYOMING, L.L.C.

Legend Communications of Wyoming, L.L.C. ("*Legend*"), permittee of Channel 252C2, Thermopolis, Wyoming (FCC File No. BPH-19971021MC) (the "*Station*"),¹ by its attorneys, hereby submits these comments in response to the Commission's *Notice of Proposed Rule Making* in the above-captioned proceeding, DA 00-2018 (released September 1, 2000) ("*NPRM*"), which was issued pursuant to the *Petition for Rule Making* (the "*Petition*") filed herein on May 9, 2000, to seek an amendment to Section 73.202(b) the FM Table of Allotments, to substitute Channel 252C1 for Channel 252C2 at Thermopolis, Wyoming; to move the allotment from Thermopolis to Story, Wyoming; and to modify the Station's construction permit to specify

¹ Legend purchased the construction permit for the Station from Idaho Broadcasting Consortium, Inc., the original petitioner, on August 1, 2000, pursuant to authority granted in FCC File No. BAPH-20000321ABG. Legend adopts the rule making request and is committed to the implementation of the improvements in the facilities of the Station described in the Petition. To avoid confusion, the petitioner will be referred to throughout as Legend, rather than as Idaho Broadcasting Consortium, Inc.

operation on Channel 252C1 at Story. As explained in the Petition, the proposed change will result in a preferential arrangement of allotments, will provide Story with its first local transmission service, and will provide a net gain in reception service to more than 21,000 persons, including the provision of new service to areas and populations now underserved.

The Petition demonstrates that Legend's request is in full accord with all applicable Commission allotment rules and policies. The allocation of Channel 252C1 at Story will represent the first local transmission service to the residents of Story, fulfilling the objectives of the third FM allocation priority. Thermopolis, the present community of allocation, will continue to receive local full time aural transmission service from Station KTHE. The allotment also meets all applicable distance separation standards of 47 C.F.R. § 73.207 and provides full city grade coverage over the entire community of Story in accordance with 47 C.F.R. § 73.315(a). As explained in the Petition, the new allotment is mutually exclusive with the Station's existing authorization at Thermopolis; upon approval of the changes in the Table of Allotments that have been requested, Legend will file an application to modify the Station's construction permit to specify operation on Channel 252C1 at Story and will thereafter construct the Station.

DISCUSSION

In the NPRM, the Commission requested that Legend provide a more comprehensive gain and loss study to identify any gray or white areas which will result from the change in community of license from Thermopolis to Story. In addition, the Commission requested that Legend explain the overall public interest benefits that will be derived from the changes proposed in the FM Table of Allotments.

The change of the allotment from Thermopolis to Story will result in a net gain in overall service, as well as the elimination of a gray area and other underserved areas. These factors far outweigh the minimal loss in service that will theoretically occur as a result of the change in community of license. As noted in the Petition, there are no primary or secondary radio or television stations licensed to Story, and the Station will be the community's first local aural transmission service, resulting in a preferential arrangement of allotments. *See Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88 (1982).² Thermopolis will retain service from full-time, commercial AM Station KTHE, and will receive full-time service from commercial FM Station KDNO(FM) (Facility ID No. 88672) and from noncommercial FM Station KUWT(FM) (Facility ID No. 92816) when those authorized stations commence service. In addition, Thermopolis is the community of license of two operating FM translators, Stations K205BO (Facility ID No. 27684) and K269CK (Facility ID No. 71819), and of another authorized but unbuilt FM translator, Station K201GK (Facility ID No. 106638).

As shown in the Engineering Statement of Graham Brock, Inc., attached as Exhibit 1 (the "*Engineering Statement*"), the proposed operation of the Station from Story will result in a net gain of service to 21,462 people and a net gain in area of 7,725.6 square kilometers.

Engineering Statement at fn. 1.³ Operating from Story as proposed in the NPRM, the Station will

² The FM Allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters, with co-equal weight given to priorities (2) and (3). 90 FCC2d at 91.

³ As explained in the Engineering Statement at fn.1, because the Thermopolis station has
(continued...)

provide a second reception service – and thereby eliminate a gray area – within an area of 659.9 square kilometers in which 15 people reside. Engineering Statement at para. 4. Moreover, broadcasting from Story, the Station will eliminate other significant underserved areas by providing a new fourth local aural service to 923 persons in an area of 5,063.6 square kilometers and a new fifth aural service to an additional 2,653 people within an area of 4,561.0 square kilometers. Engineering Statement at para. 4. Thus, not only is there an overall net service gain of more than 21,000, but service will be provided to 3,591 persons in areas that are currently underserved. Engineering Statement at para. 4.⁴

By contrast, no gray or white area will be created within the area that will lose theoretical service as a result of the move of the allotment from Thermopolis to Story. Engineering Statement at para. 3. All of the theoretical loss area will remain well served with the exception of a small area of 1,269.4 square kilometers in which 61 people reside; this area will continue to have four full-time reception signals available to it after the relocation of the allotment to Story. Engineering Statement at paras. 3, 5.

³(...continued)

not been built, in calculating overall gains and losses, it is appropriate to use theoretical maximum facilities without considering the effect of terrain features as specified in the Station's construction permit. As a consequence, the figures for the theoretical service from Thermopolis determined by Graham Brock, Inc. are different from those set forth in the NPRM at para. 3, which were derived from the application for construction permit.

⁴ Furthermore, operations from the proposed site would not create any white or gray areas. Engineering Statement at para. 3.

The Commission has approved requests for changes in the community of an allocation in cases where the loss in service has affected more people in underserved areas and when the public interest benefits are not as compelling as they are here. In *Healdton and Krum, Oklahoma*, 14 FCC Rcd 3932 (1999), the Commission granted a request to reallocate a channel from Healdton to Krum, Oklahoma, resulting in a loss of a fifth service to 3,762 persons within a 1,297 square kilometer area and the loss of a fourth service to another 22 people within a 48.6 square kilometer area as a consequence of a net gain in service to 39,256 persons, all in areas that were already well served. 14 FCC Rcd at 3935. By comparison, there are only 61 people in the loss area in this instance who would have fewer than five reception services, however the relocation of the allotment to Story will eliminate a gray area, provide new reception service to a total of 3,591 people residing in areas now underserved, and will yield a net gain in population served of greater than 21,000 people.

Of special significance in the Commission's consideration of the public interest in cases proposing a change in allotments is the establishment of first local aural transmission service. In *Palestine and Frankston, Texas*, 14 FCC Rcd 4362 (1999), the Commission granted a reallocation of the allotment where 267 persons lost a fourth reception service and an additional 100 persons lost a fifth reception service, but these losses were "outweighed by the public interest benefits of this proposal -- that is, a first local service to 1,127 people." *Id.* at 4364. Here, the relocation of the Station from Thermopolis to Story will result in first local service to approximately 700 persons in the community of Story and the provision of significant service to

underserved areas, offset by only a theoretical loss of a fifth reception service to 61 people. Thus, the reallocation to Story will clearly serve the public interest.

Finally, Legend observes that since the Station has not been constructed, and its service to Thermopolis is therefore still only theoretical, any consideration of a loss of service in this instance is muted by the fact that relocation of an allotment for an unbuilt station does not "present the parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service that the public has become reliant upon." *Bagdad and Chino Valley, Arizona*, 11 FCC Rcd 14459, 14462 (1996); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (1993).

CONCLUSION

Despite a small theoretical loss of fifth service to 61 persons, the upgrade of Channel 252C2 to Class C1 status and the reallocation of the allotment from Thermopolis to Story will clearly serve the public interest, resulting in first local aural transmission service to the residents of Story, a net gain in service to 21,462 persons, and the provision of service to 3,591 persons who are currently underserved, including the elimination of a gray area. The reallocation will not result in the creation of any gray or white areas or elimination of the sole aural

transmission service in Thermopolis. For these reasons, the Commission should delete Channel 252C2 from Thermopolis and allot Channel 252C1 to Story as set forth below:

<u>Community</u>	<u>Channel Number</u>	
	<u>Present</u>	<u>Proposed</u>
Thermopolis, WY	252C2, 269C1	269C1
Story, WY	--	252C1

Respectfully submitted,

**LEGEND COMMUNICATIONS
OF WYOMING, L.L.C.**

By: Janet Y. Shih
Brian M. Madden
H. Anthony Lehv
Janet Y. Shih

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809
(202)429-8970

October 23, 2000

Its Attorneys

**ORIGINAL FOR
FILING WITH FCC**

Prepared by:

Graham Brock, Inc.
Broadcast Technical Consultants
10 Sylvan Drive, #26
P.O. Box 24466
St. Simons Island, GA 31522
912-638-8028
202-393-5133
Fax 912-638-7722

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

TECHNICAL COMMENTS
MM DOCKET #00-159
LEGEND COMMUNICATIONS OF WYOMING, LLC
RE-ALLOT CHANNEL 252C1
STORY, WYOMING
October 2000

TECHNICAL EXHIBIT

Copyright 2000

TECHNICAL COMMENTS
MM DOCKET #00-159
LEGEND COMMUNICATIONS OF WYOMING, LLC
RE-ALLOT CHANNEL 252C1
STORY, WYOMING
October 2000

TECHNICAL STATEMENT

1. This technical statement and attached exhibits were prepared on behalf of Legend Communications of Wyoming, LLC ("LCW"), permittee of a new FM station on Channel 252C2 at Thermopolis, Wyoming. LCW is also the petitioner in MM Docket #00-159, seeking the upgrade of the outstanding permit at Thermopolis to Channel 252C1 and the re-allotment of the improved channel to Story, Wyoming, as that community's first locally licensed transmission facility.

2. In the Notice of Proposed Rule Making ("Notice"), the Commission requested that LCW submit a gain and loss area study showing the number of reception services in both areas. In its request, LCW noted that the removal of Channel 252C2 from Thermopolis would not create any white or grey area, nor leave Thermopolis without a licensed, full-time transmission service.

DISCUSSION

3. A study of the available services in both the gain and loss areas has been undertaken.¹ Exhibit #1 is a map depicting the theoretical contour of a maximum Class C2 facility operating

1) The service areas of the Thermopolis C2 and Story C1 facilities are based on 60 dBu contour radii of 52 kilometers and 72 kilometers respectively. For reference, there are 7,981 persons in 8,560.3 square kilometers within the theoretical Thermopolis 60 dBu contour. There are 29,443 persons in 16,285.9 square kilometers within the theoretical Story 60 dBu contour. Because the Thermopolis permit is unbuilt, it is considered as only theoretical service for this reception services analysis. Consequently, in keeping with the policies of the Allocation Branch in reviewing reception services, the fixed service radius of 52 kilometers is used rather than the authorized permitted service area contour containing 20,330 persons in 8,286 square kilometers. This treatment explains the difference between the totals for Thermopolis utilized in the NPRM and those contained herein.

at Thermopolis and those AM and FM stations which provide service to that area.² A tabulation of those stations is attached as Exhibit #2. Based on the facilities depicted, there are no white or grey areas within the area predicted to receive service from the construction permit and all of the residents of the predicted service area would remain well-served, except a small area of 61 persons in 1,269.4 square kilometers,³ as detailed in Exhibit #3.

4. Exhibit #4 lists the number of services within the predicted theoretical gain area, once Channel 252C1 is re-allotted to Story, Wyoming. The proposed 60 dBu contour of the Story FM facility is identical to that of Station KLGT, Buffalo, Wyoming, since KLGT transmits from the same location as the proposed allocation reference site for Story. The other AM and FM facilities providing service to the gain area are tabulated on Exhibit #5. A more detailed map, attached as Exhibit #6, depicts several under-served areas. As shown, the proposed Story facility will provide second service to -- and eliminate a "grey" area for -- 15 persons in 659.9 square kilometers. While there are some third service areas, these areas are unpopulated based on the computer population modeling program. There are, however, an additional 923 persons within 5063.6 square kilometers that will receive fourth service as a result of this proposal and an additional 2,653 persons in 4,561.0 square kilometers that will receive a fifth reception service. In total, the gain area will provide service to 3,591 persons who are currently under-served.

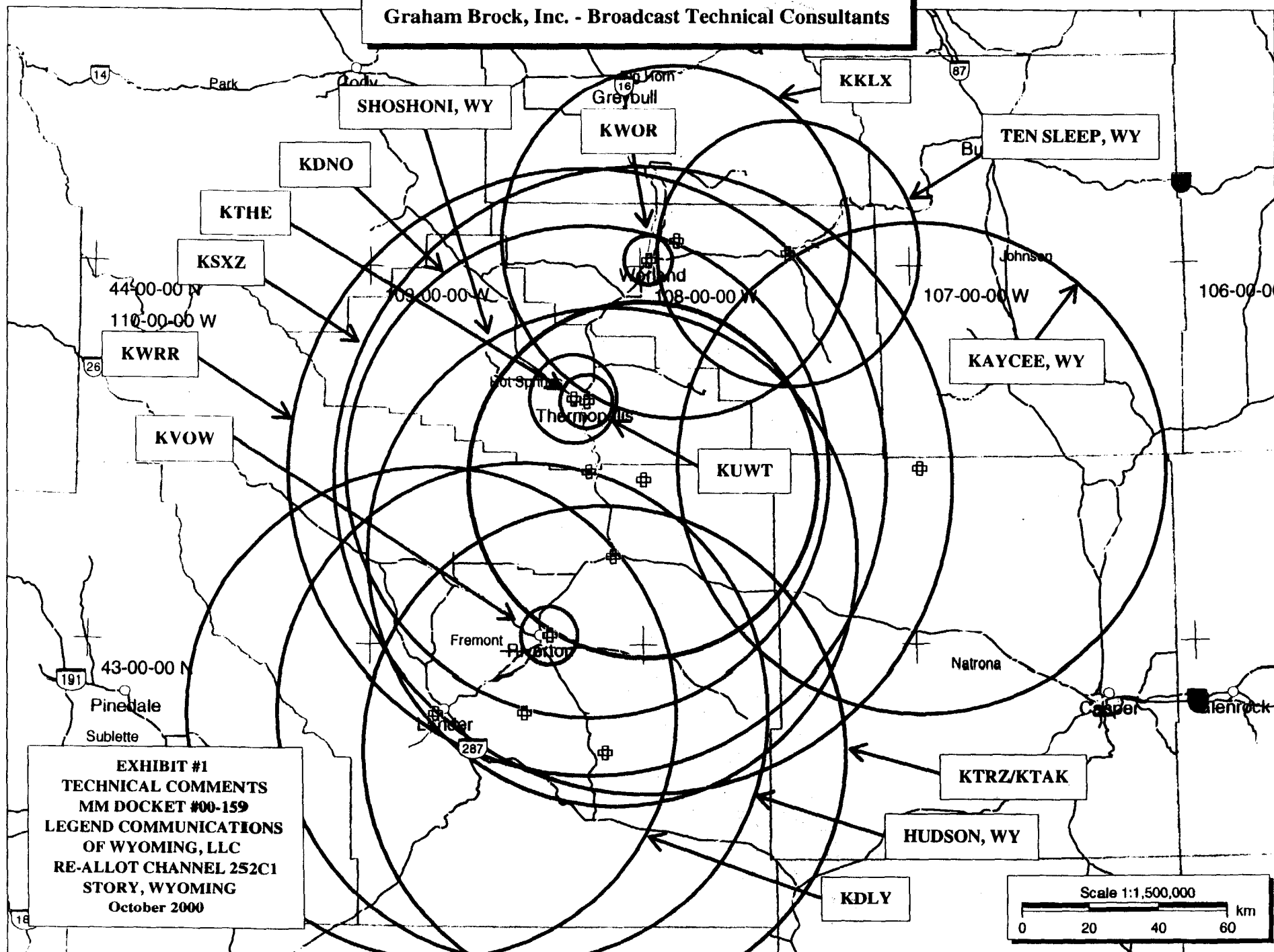
-
- 2) For all commercial FM stations, with the exception of Class C, maximum class contours were used. For Class C facilities, the contours were based on their respective authorizations or, in the case of vacant allotments, minimum values for the Class. For non-commercial FM stations the facilities' actual licensed values were used to determine the reference distance to the 60 dBu contour. Since no Class A AM facilities impacted the area, the nighttime interference free contours of Class B and C facilities were used. In the case of Class D stations, due to the high level of interference, the 25.0 mV/m contours were used.
 - 3) The area and population calculations were made using the computer program "Probe 2". The population is in a block census form, with a 1.5 kilometer resolution, extracted from the PL 94-171 files.

5. The proposed re-allotment will not deprive Thermopolis of its only local service⁴ and will provide Story with its first local transmission service. Further, while there is a small loss of theoretical fifth service to 61 persons, the re-allotment will provide second through fifth services. Additionally, the re-allotment will provide a total gain of service to 3,591 persons in 10,284.5 square kilometers. These gains far offset the minimal loss of a fifth theoretical service. The Thermopolis CP has not yet commenced operation, so, as a result, no actual loss of service will occur. Based on the foregoing, LCW respectfully requests the upgrade of Channel 252C2 to Channel 252C1 and the re-allotment of the Channel to Story, Wyoming.

6. The foregoing statement was prepared on behalf of Legend Communications of Wyoming, LLC, Graham Brock, Inc. its Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data relating to AM and FM facilities was extracted from the pertinent NTIA or CDBS database. We assume no liability for errors or omissions in those databases which may be adverse to the information contained herein.

4) Full-time commercial AM Station KTHE is licensed to Thermopolis. In addition, non-commercial FM (CP) KUWT and commercial FM station KDNO (CP) will remain authorized to serve Thermopolis.

Graham Brock, Inc. - Broadcast Technical Consultants



TECHNICAL COMMENTS
MM DOCKET #00-159
LEGEND COMMUNICATIONS OF WYOMING, LLC
RE-ALLOT CHANNEL 252C1
STORY, WYOMING
October 2000

EXHIBIT #2

Tabulation of Stations Considered in Gain/Loss Area of
Channel 252C2 at Thermopolis, Wyoming

AM Stations

Call Sign	Frequency	Power	Contour Depicted	City/State
KTHE	1240 kHz	1.0 kW ND	25.0 mV/m	Thermopolis, WY
KWOR	1340 kHz	1.0 kW ND	25.0 mV/m	Worland, WY
KVOW	1450 kHz	1.0 kW ND	25.0 mV/m	Riverton, WY

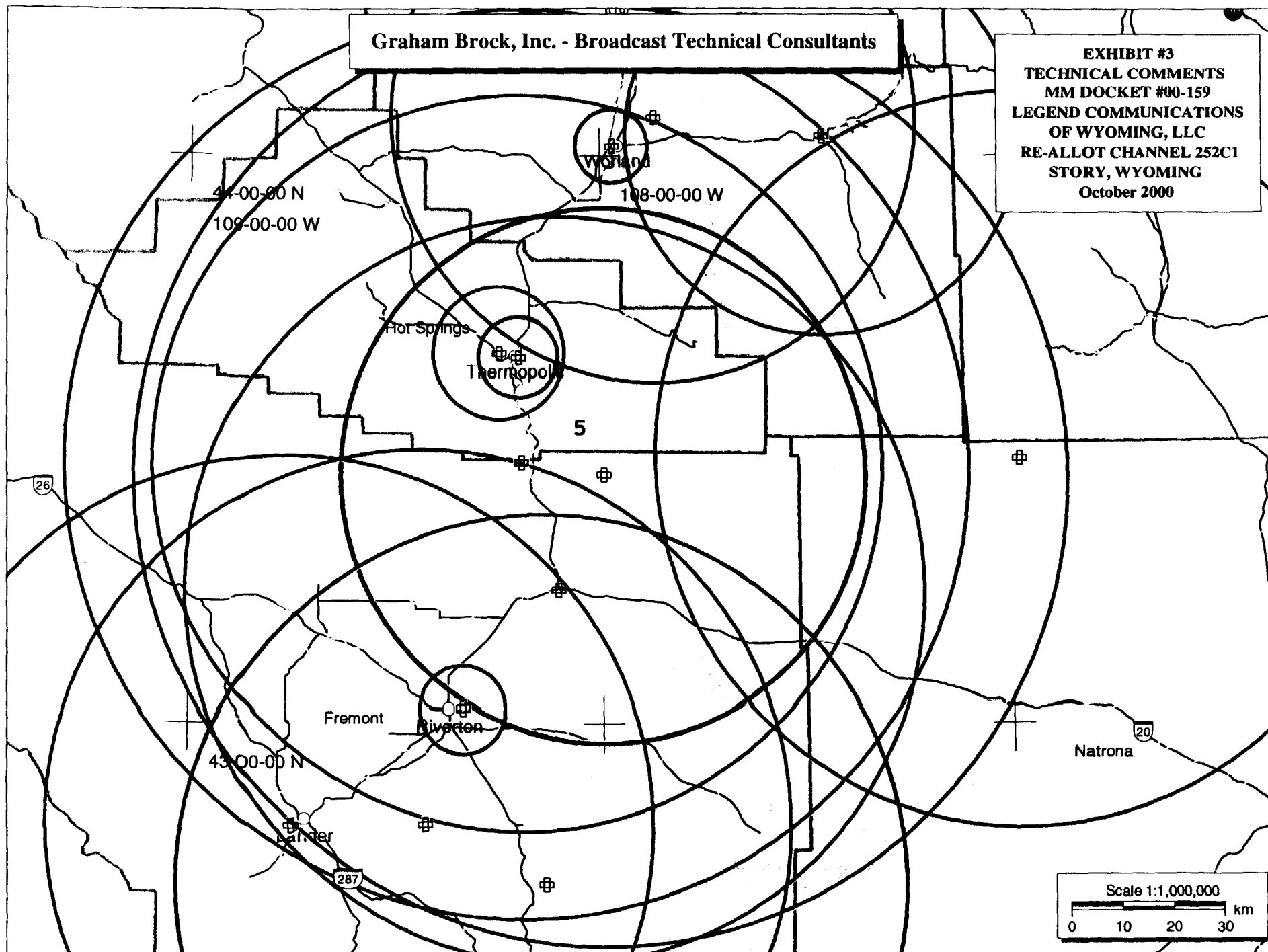
FM Stations

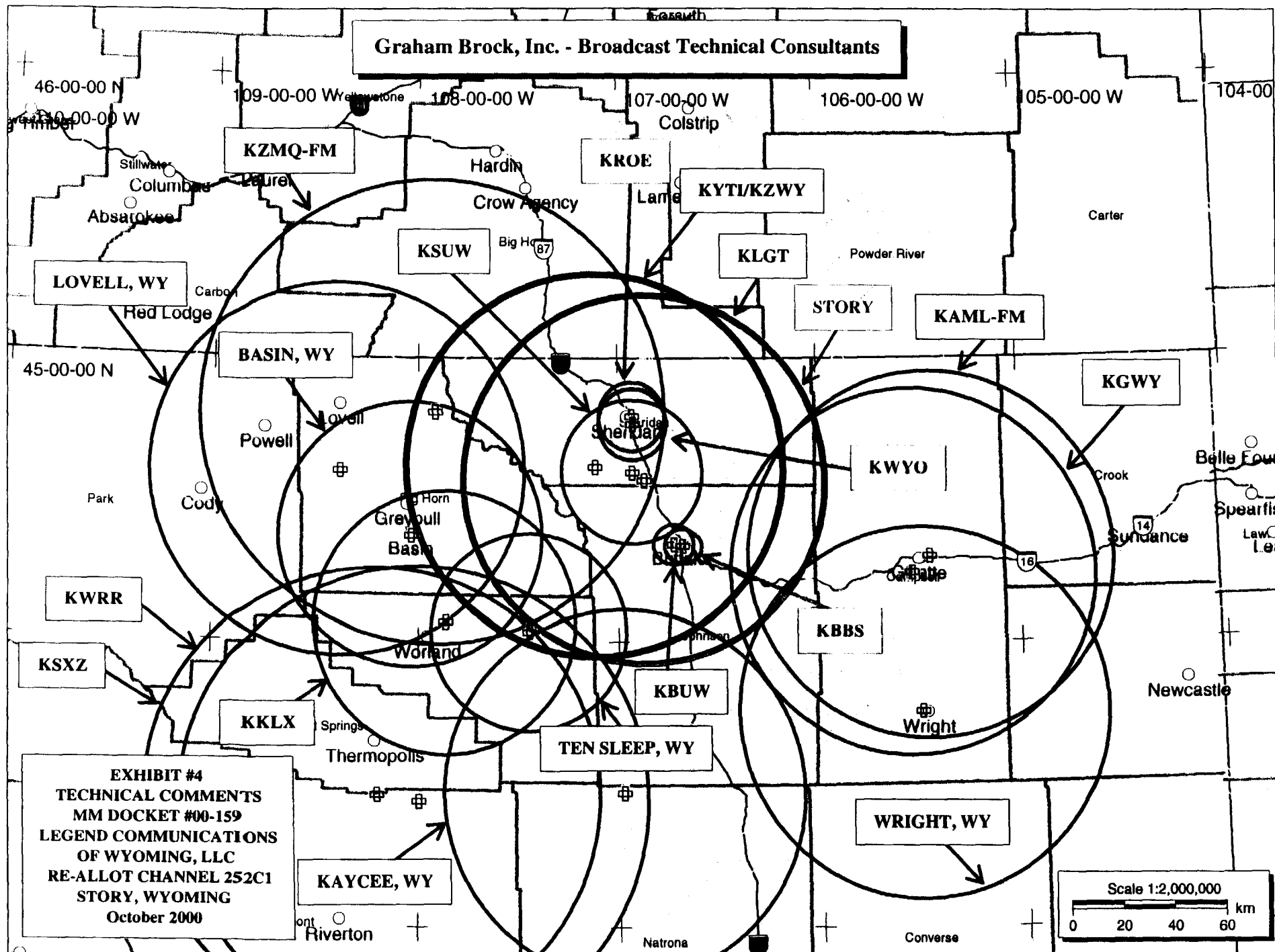
Call Sign	Channel	Power	Service Radius	City/State
KWRR	208C	100.00 kW	89 km	Ethete, WY
KUWT (CP)	217A	0.45 kW	13 km	Thermopolis, WY
Vacant	222C1	0.00 kW	72 km	Kaycee, WY
KTRZ	226C1	100.00 kW	72 km	Riverton, WY
KTAK	230C1	50.00 kW	72 km	Riverton, WY
KKLX	241C2	50.00 kW	52 km	Worland, WY
KDLY	248C1	62.00 kW	72 km	Lander, WY
KSXZ (CP)	256C	85.00 kW	92 km	Lost Cabin, WY
KDNO (CP)	269C1	24.50 kW	72 km	Thermopolis, WY
Vacant	275C	0.00 kW	73 km	Hudson, WY
Vacant	286C3	0.00 kW	39 km	Ten Sleep, WY
Vacant	290C	0.00 kW	73 km	Shoshoni, WY

NOTE: All presently vacant FM allotments were considered as part of this reception services analysis.

Graham Brock, Inc. - Broadcast Technical Consultants

EXHIBIT #3
TECHNICAL COMMENTS
MM DOCKET #00-159
LEGEND COMMUNICATIONS
OF WYOMING, LLC
RE-ALLOT CHANNEL 252C1
STORY, WYOMING
October 2000





TECHNICAL COMMENTS
MM DOCKET #00-159
LEGEND COMMUNICATIONS OF WYOMING, LLC
RE-ALLOT CHANNEL 252C1
STORY, WYOMING
October 2000

EXHIBIT #5

Tabulation of Stations Considered in Gain/Loss Area of
Channel 252C1 at Story, Wyoming

AM Stations

Call Sign	Frequency	Power	Contour Depicted	City/State
KROE	930 kHz	0.11 kW ND	5.0 mV/m	Sheridan, WY
KWYO	1410 kHz	1.00 kW DA	6.6 mV/m	Sheridan, WY
KBBS	1450 kHz	1.00 kW ND	25.0 mV/m	Buffalo, WY

FM Stations

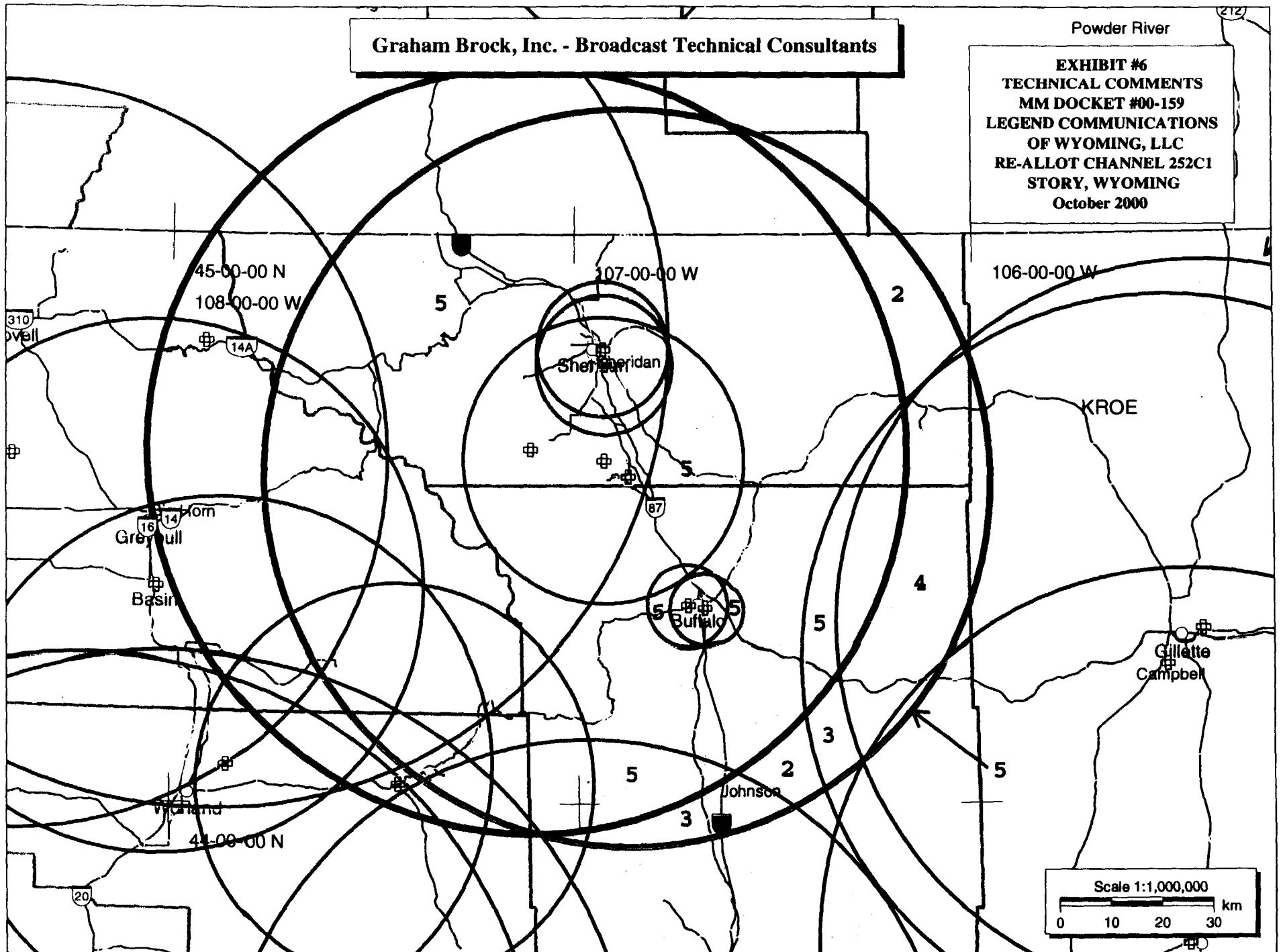
Call Sign	Channel	Power	Service Radius	City/State
KWRR	208C	100.00 kW	89 km	Ethete, WY
KBUW	213A	0.43 kW	8 km	Buffalo, WY
KSUW	217A	0.45 kW	28 km	Sheridan, WY
Vacant	222C1	0.00 kW	72 km	Kaycee, WY
KLGT	225C1	100.00 kW	72 km	Buffalo, WY
KYTI	229C	75.00 kW	75 km	Sheridan, WY
KZWY	235C	75.00 kW	75 km	Sheridan, WY
KKLX	241C2	50.00 kW	52 km	Worland, WY
KAML-FM	245C1	100.00 kW	72 km	Gillette, WY
KSXZ (CP)	256C	85.00 kW	92 km	Lost Cabin, WY
KZMQ-FM	262C	56.00 kW	92 km	Greybull, WY
KGWY	264C1	100.00 kW	72 km	Gillette, WY
Vacant	268C	0.00 kW	73 km	Wright, WY
Vacant	277C2	0.00 kW	52 km	Basin, WY
Vacant	286C3	0.00 kW	39 km	Ten Sleep, WY
Vacant	296C	0.00 kW	73 km	Lovell, WY

NOTE: All presently vacant FM allotments were considered as part of this reception services analysis.

Graham Brock, Inc. - Broadcast Technical Consultants

Powder River

EXHIBIT #6
TECHNICAL COMMENTS
MM DOCKET #00-159
LEGEND COMMUNICATIONS
OF WYOMING, LLC
RE-ALLOT CHANNEL 252C1
STORY, WYOMING
October 2000



AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Legend Communications of Wyoming, LLC, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 19th day of October, 2000.

Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 19th day of October, 2000.*

*Notary Public, State of Georgia
My Commission Expires: April 20, 2002*